

May 24 2021 10:34 AM

KEVIN STOCK  
COUNTY CLERK  
NO: 21-2-05979-3

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY

GISELLE MCKENZIE,

Plaintiff,

vs.

DOLLAR TREE STORES, INC., a  
Virginia corporation, AMERICAN  
CONSUMER PRODUCTS CORP, a  
California corporation, and KITTRICH  
CORPORATION, a California  
corporation,

Defendants.

NO.

COMPLAINT

COMES NOW Plaintiff, by and through her attorney of record, James F. Whitehead, and  
for cause of action against the Defendants states and alleges as follows:

1. This Court has jurisdiction over the subject matter herein pursuant to RCW  
2.08.010, and venue in this Court is proper pursuant to RCW 4.12.025 and RCW 4.28.185.

2. At all times material hereto, Plaintiff Giselle McKenzie was a resident of Tacoma,  
Pierce County, Washington.

3. On information and belief, at all times material hereto, defendant Dollar Tree  
Stores, Inc., was organized and existing under the laws of the Commonwealth of Virginia, and

1 operated a retail store in Tukwila, Washington, selling a wide variety of consumer products  
2 including ColorEazy Hair Dye. On information and belief, at all relevant times defendant  
3 American Consumer Products Corp was a company organized and existing under the laws of the  
4 State of California and located in Vernon, California, that either was part of the chain of  
5 manufacture or distribution of ColorEazy Hair Dye. And on information and belief, at all  
6 relevant times, defendant Kittrich Corporation was a company organized and existing under the  
7 laws of the State of California and was either in the chain of manufacture or distribution of Color  
8 Eazy Hair Dye or the parent company of American Consumer Products Corp.  
9

10 4. On or about December 19, 2019, plaintiff decided to try a new hair dye and  
11 purchased at the aforesaid Dollar Tree retail store in Tukwila, Washington, a package of black  
12 ColorEazy Hair Dye. That night or early the next morning, she decided to dye her hair with this  
13 product. She read the instructions on the box the product came in and then, following  
14 instructions, dyed her hair. Almost immediately she experienced very concerning lesions on her  
15 scalp, burning pain, swelling in her face leading to her eyes swelling nearly shut, discoloration of  
16 her skin, and oozing of some kind of liquid on her scalp. These conditions lingered for weeks  
17 with some continuing to the present time, including the significant physical injuries described  
18 herein, but they also interfered enormously with her sleep and caused great anxiety and  
19 depression. Although she sought some medical treatment, she was unable to afford much care  
20 and tried to care for herself as much as possible, thinking the immediate symptoms would  
21 improve, but some of the symptoms endured, even to the present day.  
22

23  
24 5. With her limited means, plaintiff did seek short-term treatment from several  
25 healthcare providers. She first went to the Emergency Room at Multicare Tacoma, later sought

1 treatment from her primary care provider, as well as a dermatologist, and an eye doctor. She was  
2 prescribed a topical treatment for her scalp and received eye drops to treat dryness of the eyes  
3 after the incident. Her scalp is, however, still itchy and irritated and feels very hot when she has  
4 been sleeping. She fears that these conditions may be permanent.

### 5 **Negligence**

6 6. Plaintiff hereby references and incorporates herein the allegations of paragraphs  
7 1-5 above as if fully restated.

8 7. At all relevant times plaintiff was exercising reasonable care and following  
9 instructions for dying her hair with the ColorEazy product. She had dyed her hair numerous  
10 times in her life, never before suffering any significant discomfort or lesions.

11 8. At all relevant times, defendants owed plaintiff the duty to exercise reasonable  
12 care under the circumstances, with respect to the design and manufacture of the hair dye product  
13 she purchased, to avoid causing her, and all consumers of their products, harm. They breached  
14 this duty by producing a product that was not safe for her use, and that breach was the proximate  
15 cause of her injuries and damages described above.  
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### 18 **Breach of Contract**

19 9. Plaintiff hereby references and incorporates herein the allegations of paragraphs  
20 1-5 and 7-8 above as if fully restated.

21 10. Plaintiff purchased the aforesaid ColorEazy hair dye at a Dollar Tree Store in  
22 Tukwila, Washington. Under applicable law she was obligated to pay for the product, which she  
23 did, and defendants or any one of them explicitly or implicitly promised to provide a safe  
24 product for her use, subject to any enforceable limitations on that promise. On information and  
25



1 belief, there were no enforceable limitations on any such obligation. Accordingly, defendants, or  
2 any one of them, breached their contractual obligations and proximately caused all of the injuries  
3 and damages plaintiff has suffered, as set forth above, or will likely suffer in the future.

4 **Res Ipsa Loquitur**

5 11. Plaintiff hereby references and incorporates herein the allegations of paragraphs  
6 1-5, 7-8, and 10 above as if fully restated.

7 12. The Res Ipsa Loquitur doctrine ("the thing speaks for itself") applies in this case  
8 to impose liability, whether or not specific acts or omissions of negligence can be proved, where  
9 it can be said in the light of past experience that the damage must have been the result of  
10 negligence and that such negligence proximately caused her injuries and damages set forth  
11 above.  
12

13 WHEREFORE, plaintiff prays that she recover from the defendants, or any one of them,  
14 her full damages in an amount to be proven at trial and that she recover her attorney fees and  
15 costs and interest and be awarded such other relief as the Court may determine is just and  
16 equitable.  
17

18 Dated at Seattle, Washington, this 23<sup>rd</sup> day of May, 2021.

19 LAW OFFICE OF JAMES F. WHITEHEAD

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21 James F. Whitehead, WSBA# 6319  
22 Attorneys for Plaintiff  
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